IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos 8305 and 8306 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARVINDCHANDRA GAMANLAL MANDVIWALA

Versus

DEPUTY COLLECTOR

Appearance:

1. Special Civil Application No. 8305 of 1999

MR BA SURTI for Petitioner No. 1

MR BHATE, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 15/12/2004

COMMON ORAL JUDGEMENT

#. In these petitions filed under Article 226/227 of the Constitution of India, the respective petitioners have

challenged the legality and validity of the orders passed by respondent No.2 dated 16.8.1999 in dismissing the appeals preferred by the petitioners and confirming the orders passed by respondent NO.1 dated 18.7.1995, by which, the respective petitioners are directed to pay the deficit stamp duty and Rs.250/- by way of penalty.

#. The petitioner of Special Civil Application No.8305 of 1999 had purchased the plot No.12 paiki by registered sale deed dated 1.12.1990 and the said document was presented before the Sub-Registrar, Surat on 1.12.1990 and the same was registered as document registration No.14398.

2.1 The petitioner of Special Civil Application No.8306 of 1999 had purchased another the plot No.12 paiki by registered sale deed dated 1.12.1990 and the said document was presented before the Sub-Registrar, Surat on 1.12.1990 and the same was registered as document registration No.14397.

#. The Sub-Registrar, Surat was of the opinion that the market value which is fixed by the petitioners on the basis of which the stamp duty is paid is not correct market value, and, therefore, reference was made to respondent No.1 for determining the market value under Section 32-A of the Bombay Stamp Act, 1958 ("the Act" for short). Notice under Rule 4(2) of the Market Value Rules, 1984 ("the Rules" for short) came to be issued on 15.4.1993 determining the provisional market value of the property in question at Rs.7,97,223/- and the petitioners were directed to produce the evidence with regard to the market value of the property in question.

#. It is the case of the petitioners that the petitioners appeared before respondent No.1 and raised the objections against the notice and thereafter, respondent No.1 has passed the impugned order dated 25.8.1995 determining the market value of the property in question at Rs.7,97,223/- and directed each petitioner to pay the amount of Rs.80446/- being the deficit stamp duty and Rs.250/- by way of penalty. Being aggrieved by and dissatisfied with the order dated 25.8.1995 the petitioners preferred the appeals before respondent No.2 which also came to be dismissed by the appellate authority by judgment and order dated 16.8.1999 and hence, the present petitions have been filed.

#. Mr.B.A.Surti, learned advocate appearing for the petitioners, has submitted that apart from the fact that the procedure which is required to be followed under Rule

4 of the Rules, which is not followed, more particularly respondent No.1 was required to inform the basis upon which the provisional market value is fixed is not supplied. Even while passing the impugned order dated 25.8.1995 while determining the market value at Rs.7,97,223/- respondent No.1 has relied upon one another document / sale deed being document No.10618/90 with regard to adjacent land and the same is done behind the back of the petitioners and the petitioners are not given any opportunity to meet with the said document and valuation of the aforesaid document / sale deed upon which the reliance is placed, and, therefore, the impugned order dated 25.8.1995 is in breach of the principles of natural justice. He submitted that it was incumbent on the part of respondent No.1 to supply all the documents upon which the reliance has been placed while fixing the market value of the property in question directing the petitioners to pay the deficit stamp duty.

#. Mr.Bhate, learned AGP appearing for the respondents has fairly conceded that the petitioners are not served with the document upon which the reliance has been placed by respondent No.1 while fixing the market value of the property in question at Rs.7,97,223/-. Even, there is no affidavit-in-reply filed on behalf of the respondents. When the authority is relying upon a particular document and/or sale instance for the purpose of passing the order, it is incumbent on the part of the authority to supply the said document and give opportunity to the concerned person so that appropriate representation can be made. If the document which is relied upon while passing the impugned order is not given, then it can be said that the order is passed arbitrarily and in breach of the principles of natural justice. In the present case, as stated above, while passing the impugned order and determining the market value of the property in question at Rs.7,97,223/-, respondent No.1 has relied upon one document / sale deed No.10618/90 and the petitioners are not given any opportunity to meet with the same. The attention of the petitioners was not even drawn by respondent No.1 that respondent No.1 has relied upon the said document while determining the market value and behind the back of the petitioners, respondent No.1 has relied upon the aforesaid document. The impugned order has been passed in breach of the principles of natural justice. Under the circumstances, the impugned orders passed by the authorities are required to be quashed and set aside and the matters are required to be remanded to respondent NO.1 for passing the order afresh on its own merits and in accordance with law after following necessary procedure which is required to be

followed under Rule 4(2) of the Rules as well Rule 8 of the Rules and after supplying necessary documents to the petitioners upon which reliance is placed by respondent No.1.

#. For the reasons stated above, the impugned order dated 25.8.1995 passed by respondent No.1 confirmed by the appellate authority by judgment and order dated 16.8.1999 with regard to the document in question are quashed and set aside. The matters are remanded to respondent No.1 for passing appropriate order, as stated above.

#. In view of the above, these petitions are allowed. Rule is made absolute with no order as to costs.

(M.R.Shah,J)

(pathan)